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Attorneys for Plaintiff THERESA BROOKE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

THERESA BROOKE, a married woman
dealing with her sole and separate claim,

Plaintiff,

vs.

SANTA CRUZ MISSION HOTEL LP, a
California limited partnership dba Fairfield
Inn & Suites Santa Cruz,

Defendant.

Case No: 5:19-cv-06688-NC

**AMENDED COMPLAINT FOR
DAMAGES, DECLARATORY
RELIEF AND INJUNCTIVE
RELIEF FOR VIOLATIONS OF
AMERICANS WITH
DISABILITIES ACT AND UNRUH
CIVIL RIGHTS ACT**

(JURY TRIAL DEMANDED)

Plaintiff Theresa Marie Brooke alleges:

PARTIES

1. Plaintiff Theresa Brooke is a married woman currently residing in Pinal County, Arizona and has an office in San Jose, California for purposes of ADA-related testing and business. Plaintiff is and, at all times relevant hereto, has been legally disabled, confined to a wheel chair, and is therefore a member of a protected class under the ADA, 42 U.S.C. § 12102(2), the regulations implementing the ADA set forth at 28 CFR §§ 36.101 et seq., the California Unruh Civil Rights Act. Plaintiff ambulates with the aid of a wheelchair due to the loss of a leg.

ALLEGATIONS

9. Plaintiff formerly worked in the hospitality industry and her husband works in the travel industry. She and her husband are avid travelers to California for purposes of leisure travel, court-related hearings, conferences and inspections, and to “test” whether various hotels across the Country comply with disability access laws. She has been to California countless times over the past few years for purposes of checking ADA compliance, leisure travel, and court-related conferences.

10. Because Plaintiff relies on a wheelchair for locomotion, she requires the use of lodging rooms that are accessible to her and that have the standard accessibility features such as roll-in showers, adequate spacing at doorways and between furniture and beds, and other commonly-accepted accessibility features. Plaintiff also seeks equality in the selection of the same type of lodging rooms that are available to able-bodied persons.

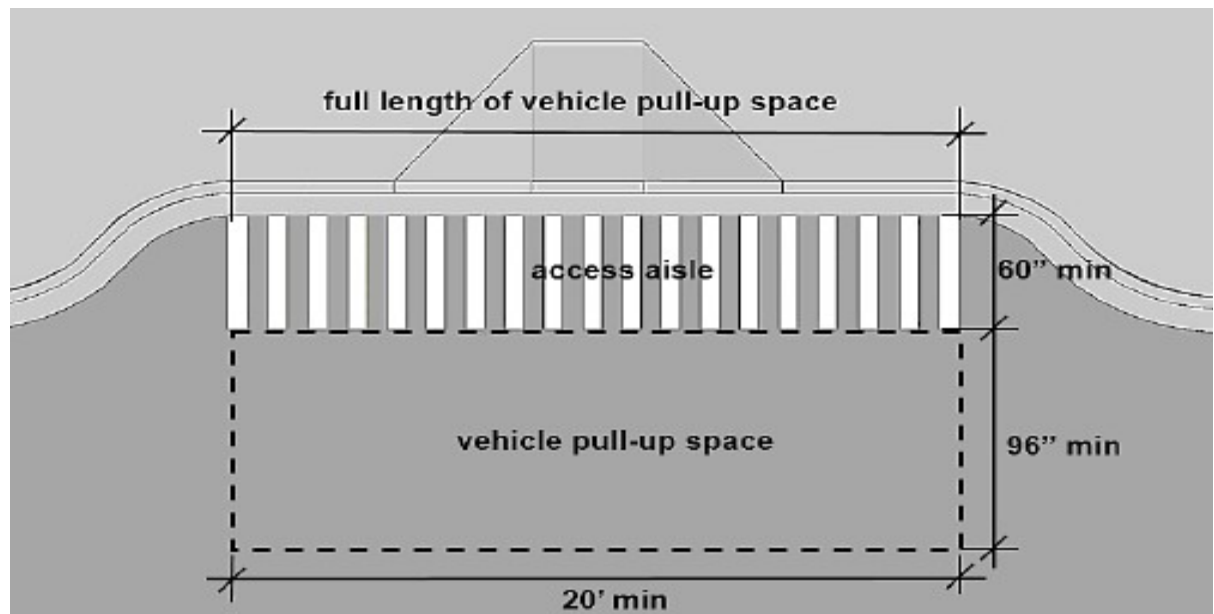
11. Earlier this month during the pendency of the instant case, Plaintiff and her husband took a trip to the Bay Area for purposes of visiting her San Jose office and to engage in ADA testing at various hotels across the Bay Area. She anticipates re-visiting the Bay Area multiple times over the next year for purposes of further ADA testing, leisure travel and attending Court-related conferences, hearings and the like.

12. During Plaintiff’s trip, she visited Defendant’s hotel and parked in the passenger loading zone directly in front of the lobby. While at Defendant’s hotel but prior to entering the hotel, she went online to Defendant’s website to assess the accessibility of the hotel, including what room-types are offered at the hotel and to get a better rate than what is offered in person versus online. While online, Plaintiff sought to rent the One-Bed standard room, but Defendant does not offer a standard room with one bed that is ADA accessible. The sole standard room offered that is ADA accessible is the two-bed standard room. These two rooms are not comparable. Deterred at the lack of equality, Plaintiff did not book a room.

13. Plaintiff sought to verify what she observed on Defendant's website with Defendant's front desk at the hotel. However, Plaintiff was not physically able to access the lobby from the passenger loading zone because Defendant does not provide a compliant access aisle in conformity with Section 503 of the 2010 Standards.

14. The purpose of the Section 503 access aisle is to mark a safe passage way for persons in a wheelchair.

15. An illustration of a correct access aisle and compliant cut-out are provided below, which was not provided by Defendant:



16. The hotel does not have this access aisle.

17. Plaintiff obtained knowledge of two physical barriers located at Defendant's hotel.

18. Plaintiff is deterred from visiting Defendant's hotel in the future until and unless Defendant remedies the barrier referenced above. Plaintiff will visit Defendant's hotel during one of the several anticipated trips she has to the Bay Area in the coming year, but only if Defendant decides to remedy the barrier.

19. Both the 1991 Standards of Accessible Design and the 2010 Standards of Accessible Design have room dispersion requirements.

1 20. Section 9.1.4 of the 1991 Standards requires “equivalent” room-type
2 choices that are accessible. “Factors to be considered include room size, cost, amenities
3 provided, and the number of beds provided.”

4 21. Section 224.5 of the 2010 Standards require that hotels “shall provide
5 choices of guest rooms, number of beds, and other amenities comparable to the choices
6 provided to other guests.” Similar “factors” in ascertaining comparability are listed in
7 Section 224.5 as in Section 9.1.4 of the 1991 Standards, including room size, bed size,
8 cost, view and bathroom fixtures.

9 22. Irrespective of whether the 1991 Standards or 2010 Standards apply here,
10 Defendant violates both. Defendant does not provide comparable or equivalent room-
11 type choices as described above.

12 23. Defendant also violates the ADA per se with its refusal to provide certain
13 rooms to disabled persons, but making such rooms available to able-bodied persons.
14 This is the type of discrimination and lack of equality the ADA was intended to
15 eradicate.

16 24. Defendant also violates Section 503 of the 2010 Standards by not having
17 an access aisle at the passenger loading zone in front of the lobby.

18 25. It is readily achievable to alter the hotel to provide comparable or
19 equivalent room-type choices that are accessible at the hotel.

20 26. It is readily achievable to paint a compliant access aisle.

21 27. Without injunctive relief, Plaintiff and others will continue to be unable to
22 independently use Defendant’s hotel in violation of her rights under the ADA.

23 28. Other potential violations and barriers to entry at Defendant’s hotel may
24 be discovered during this litigation. It is Plaintiff’s intention to cure all ADA violations
25 at this hotel, so as to avoid piecemeal litigation, and she will amend this Complaint
26 pursuant to *Doran* if additional ADA violations are discovered in discovery or at the
27 Joint Site Inspection generally ordered in Northern District of California cases.

28

FIRST CAUSE OF ACTION

(Violation of Title III the Americans with Disabilities Act – Room Dispersion)

29. Plaintiff incorporates all allegations heretofore set forth.

30. Defendant has discriminated against Plaintiff and others in that it has failed to make its public lodging services fully accessible to, and independently usable by, individuals who are disabled in violation of 42 U.S.C. § 12182(a) and § 12182(b)(2)(iv) and the 2010 Standards, as described above.

31. Defendant has discriminated against Plaintiff in that it has not provided Plaintiff equal choice among the room types at the hotel in violation of 42 U.S.C. § 12182(b)(A)(iv) and the 1991 and 2010 Standards, as described above. Compliance with the requirements of the 1991 and 2010 Standards would neither fundamentally alter the nature of Defendant's lodging services nor result in an undue burden to Defendant, as altering a non-accessible room to an accessible room is a simple endeavor that does not require structural construction.

32. Compliance with 42 U.S.C. § 12182(b)(2)(A)(iv) and the 1991 and 2010 Standards, as described above, is readily achievable by the Defendant due to the low costs of modifying a non-accessible room. Readily achievable means that providing access is easily accomplishable without significant difficulty or expense.

33. Defendant's conduct is ongoing, and, given that Defendant has never fully complied with the ADA's requirements that public accommodations make lodging services fully accessible to, and independently usable by, disabled individuals, Plaintiff invokes her statutory right to declaratory and injunctive relief, as well as costs and attorneys' fees.

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- a. A Declaratory Judgment that at the commencement of this action Defendant was in violation of the specific requirements of Title III of the ADA described above, and the relevant implementing regulations of the

ADA, in that Defendant took no action that was reasonably calculated to ensure that its lodging rooms were equally distributed to disabled persons;

- b. Irrespective of Defendants “voluntary cessation” of the ADA violation, if applicable, a permanent injunction pursuant to 42 U.S.C. § 12188(a)(2) and 28 CFR § 36.504(a) which directs Defendant to take all steps necessary to bring its lodging rooms into full compliance with the requirements set forth in the ADA, and its implementing regulations, so that the lodging rooms are fully accessible to, and independently usable by, disabled individuals, and which further directs that the Court shall retain jurisdiction for a period to be determined after Defendant certifies that its lodging rooms are fully in compliance with the relevant requirements of the ADA to ensure that Defendant has adopted and is following an institutional policy that will in fact cause Defendant to remain fully in compliance with the law;
- c. Payment of attorney’s fees and costs;
- d. The provision of whatever other relief the Court deems just, equitable and appropriate.

SECOND CAUSE OF ACTION

(Violation of Title III the Americans with Disabilities Act – No Access Aisle)

34. Plaintiff incorporates all allegations heretofore set forth.

35. Defendant has discriminated against Plaintiff and others in that it has failed to make its public lodging services fully accessible to, and independently usable by, individuals who are disabled in violation of 42 U.S.C. § 12182(a) and § 12182(b)(2)(iv) and the 2010 Standards, as described above.

36. Defendant has discriminated against Plaintiff in that it has failed to remove architectural barriers to make its lodging services fully accessible to, and independently usable by individuals who are disabled in violation of 42 U.S.C. §12182(b)(A)(iv) and the 2010 Standards, as described above. Compliance with the

2010 Standards would neither fundamentally alter the nature of Defendant's lodging services nor result in an undue burden to Defendant.

37. In violation of the 2010 Standards, Defendant's hotel passenger loading zone does not have a disability access aisle as required by Section 503 of the Standards.

38. Compliance with 42 U.S.C. § 12182(b)(2)(A)(iv) and the 2010 Standards, as described above, is readily achievable by the Defendant. *Id.* Readily achievable means that providing access is easily accomplishable without significant difficulty or expense.

39. Defendant's conduct is ongoing, and, given that Defendant has never fully complied with the ADA's requirements that public accommodations make lodging services fully accessible to, and independently usable by, disabled individuals, Plaintiff invokes her statutory right to declaratory and injunctive relief, as well as costs and attorneys' fees.

40. Without the requested injunctive relief, specifically including the request that the Court retain jurisdiction of this matter for a period to be determined after the Defendant certifies that it is fully in compliance with the mandatory requirements of the ADA that are discussed above, Defendant's non-compliance with the ADA's requirements that its passenger loading zone be fully accessible to, and independently useable by, disabled people is likely to recur.

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- a. A Declaratory Judgment that at the commencement of this action Defendant was in violation of the specific requirements of Title III of the ADA described above, and the relevant implementing regulations of the ADA, in that Defendant took no action that was reasonably calculated to ensure that all of its passenger loading zone is fully accessible to, and independently usable by, disabled individuals;
- b. Irrespective of Defendants "voluntary cessation" of the ADA violation, if applicable, a permanent injunction pursuant to 42 U.S.C. § 12188(a)(2)

and 28 CFR § 36.504(a) which directs Defendant to take all steps necessary to bring its passenger loading zone into full compliance with the requirements set forth in the ADA, and its implementing regulations, so that the passenger loading zone is fully accessible to, and independently usable by, disabled individuals, and which further directs that the Court shall retain jurisdiction for a period to be determined after Defendant certifies that its passenger loading zone is fully in compliance with the relevant requirements of the ADA to ensure that Defendant has adopted and is following an institutional policy that will in fact cause Defendant to remain fully in compliance with the law;

- c. Payment of costs and attorney's fees;
- d. The provision of whatever other relief the Court deems just, equitable and appropriate.

THIRD CAUSE OF ACTION

(Violation of the California Unruh Civil Rights Act, Cal. Civ. Code §§51, 52)

41. Plaintiff realleges all allegations heretofore set forth.

42. A violation of the ADA constitutes a violation of Unruh.

43. Defendant has violated the Unruh by denying Plaintiff equal access to its public accommodation on the basis of her disability as outlined above.

44. Unruh provides for declaratory and monetary relief to "aggrieved persons" who suffer from discrimination on the basis of their disability.

45. Plaintiff has been damaged by the Defendant's non-compliance with Unruh.

46. Pursuant to Cal Civ. Code §52, Plaintiff is further entitled to such other relief as the Court considers appropriate, including monetary damages in an amount to

1 be proven at trial, but in no event less than \$8,000.00 for the minimum statutory
2 damages for the two violations alleged herein.

3 47. Pursuant to Unruh, Plaintiff is entitled to attorney's fees and costs in an
4 amount to be proven at trial.

5 WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- 6 a. A Declaratory Judgment that at the commencement of this action
7 Defendant was in violation of the specific requirements of Unruh; and
8 b. Irrespective of Defendants "voluntary cessation" of the ADA violation, if
9 applicable, a permanent injunction pursuant to 42 U.S.C. § 12188(a)(2)
10 and 28 CFR § 36.504(a) which directs Defendant to take all steps
11 necessary to bring its lodging rooms into full compliance with the
12 requirements set forth in the ADA, and its implementing regulations, so
13 that the lodging rooms are fully accessible to, and independently usable
14 by, disabled individuals, and which further directs that the Court shall
15 retain jurisdiction for a period to be determined after Defendant certifies
16 that its lodging rooms are fully in compliance with the relevant
17 requirements of the ADA to ensure that Defendant has adopted and is
18 following an institutional policy that will in fact cause Defendant to
19 remain fully in compliance with the law;
20 c. Damages in the amount of not less than \$8,000.00;
21 d. Payment of attorney's fees and costs;
22 e. The provision of whatever other relief the Court deems just, equitable and
23 appropriate.

24 **DEMAND FOR JURY TRIAL**

25 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby
26 demands a jury trial on issues triable by a jury.
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28

1 RESPECTFULLY SUBMITTED this 26th day of March, 2020.

2 /s/ P. Kristofer Strojnik
3 P. Kristofer Strojnik (242728)
4 Attorneys for Plaintiff

5 **VERIFICATION**

6 I declare under penalty of perjury that the foregoing is true and correct.
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8 DATED this 16th day of March, 2020.

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11 Theresa Brooke
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